

INSURANCE ALERT

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Ohio Governor Signs Captive Insurance Bill

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Ohio companies are able to operate their own locally based commercial insurance subsidiaries under legislation signed into law on June 17, 2014 by Ohio Governor John Kasich. House Bill 117 allows Ohio businesses to form a captive insurance company, or CIC, to exclusively serve the parent company and affiliated entities with commercial auto liability, workers' compensation, medical malpractice and other coverage.

Ohio joins more than 30 states that currently allow the formation of captives. Previously, Ohio businesses had been required to register subsidiary CICs outside the state. Now CICs can be formed in Ohio and subject to Ohio's regulatory framework. CICs have become popular risk-management tools and can be helpful if the parent company is unable to find an outside firm to cover a particular risk. The state insurance department expects to have specific provisions ready by fall.

The following is a brief summary of the legislation's key provisions.

Rules

The bill authorizes the Superintendent of Insurance to adopt rules in accordance with Ohio Administrative Procedure Act as are reasonably necessary for the implementation and operation of the CIC law. R.C. 3964.21.

Captive Insurance Regulation and Supervision Fund

The legislation creates the Captive Insurance Regulation and Supervision Fund, consisting of revenues received by the Superintendent from fees, fines, penalties, and assessments related to CICs. R.C. 3964.15(A).

Workers' Compensation

Any self-insuring employer that is indemnified by a CIC is required to pay a contribution to the Self-Insuring Employers' Guaranty Fund. This fund is operated by the Bureau of Workers' Compensation and provides for payment of compensation and benefits to employees of the self-insuring employer in order to cover any default in payment by that employer.

Foreign CICs

A CIC organized under the laws of another state or jurisdiction may become a domestic CIC after complying with all the bill's relevant requirements to be a domestic CIC. R.C. 3964.20.

Other Insurance Laws

Generally, CICs are to be governed only by the CIC law. Other provisions of law related to insurance companies do not apply unless specified in the CIC law or unless CICs are expressly and statutorily made subject to the other insurance law, or with respect to a line of authority granted to a CIC by the

Superintendent of Insurance. R.C. 3964.14(A). The bill expressly makes CICs subject to the Insurers Supervision, Rehabilitation, and Liquidation Act, except as otherwise provided in the bill. R.C. 3964.14(B).

Protected Cell Captive Insurance Companies

The legislation provides for the operation of protected cell captive insurance companies (PCIC). A PCIC is a CIC consisting of separate “cells,” where each cell owns particular liabilities and has assets associated with those liabilities. A cell is responsible only for its own liabilities.

Under the legislation, a CIC may be organized as a PCIC and may form one or more protected cells to insure or reinsure the risks of one or more participants of the PCIC. If such a company is formed, then the assets and liabilities of each protected cell must be held separately from the assets and liabilities of all other protected cells. R.C. 3964.17(B) and (C). A participant that is not an insurance agent licensed in Ohio must insure or reinsure only its own risks through a protected cell. However, if the participant is an insurance agent licensed in Ohio, the participant contract must define each risk covered by the contract with fixed and certain terms. R.C. 3964.17(A)(4).

Special Purpose Financial Captive Insurance Companies

The legislation also provides for the operation of special purpose financial captive insurance companies (SPFC). An SPFC is a form of a captive insurer where an insurer cedes risk related to life insurance to the captive, either through reinsurance or directly transferring the risk to the SPFC, through what is referred to as an SPFC contract.

The legislation prescribes general requirements for SPFCs and their operation and provides that any such requirement may be waived for a specific SPFC if the Superintendent finds the requirement to be inappropriate for that SPFC and if the SPFC meets the related criteria adopted in rules. R.C. 3964.19(B). An SPFC may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of SPFC contracts, insurance securitization, and the SPFC law. R.C. 3964.419(C)(2).

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